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HOUSE BILL 282

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Anna M. Crook

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE INCOME TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS. -- For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years

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1 beginning on or after January 1, 1991, the amount of the net
2 operating loss deduction allowed by Section 172(a) of the
3 Internal Revenue Code, as that section may be amended or
4 renumbered, and taken by the taxpayer for that year;

5 (2) means, for taxpayers other than estates or
6 trusts, that part of the taxpayer's income defined as adjusted
7 gross income plus, for taxable years beginning on or after
8 January 1, 1991, the amount of the net operating loss deduction
9 allowed by Section 172(a) of the Internal Revenue Code, as that
10 section may be amended or renumbered, and taken by the taxpayer
11 for that year; and

12 (3) includes, for all taxpayers, any other
13 income of the taxpayer not included in adjusted gross income
14 but upon which a federal tax is calculated pursuant to the
15 Internal Revenue Code for income tax purposes, except amounts
16 for which a calculation of tax is made pursuant to Section 55
17 of the Internal Revenue Code, as that section may be amended or
18 renumbered; "base income" also includes interest received on a
19 state or local bond;

20 C. "compensation" means wages, salaries,
21 commissions and any other form of remuneration paid to
22 employees for personal services;

23 D. "department" means the taxation and revenue
24 department, the secretary of taxation and revenue or any
25 employee of the department exercising authority lawfully

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1 delegated to that employee by the secretary;

2 E. "fiduciary" means a guardian, trustee, executor,
3 administrator, committee, conservator, receiver, individual or
4 corporation acting in any fiduciary capacity;

5 F. "filing status" means "married filing joint
6 returns", "married filing separate returns", "head of
7 household", "surviving spouse" and "single", as those terms are
8 generally defined for federal tax purposes;

9 G. "fiscal year" means any accounting period of
10 twelve months ending on the last day of any month other than
11 December;

12 H. "head of household" means "head of household" as
13 generally defined for federal income tax purposes;

14 I. "individual" means a natural person, an estate,
15 a trust or a fiduciary acting for a natural person, trust or
16 estate;

17 J. "Internal Revenue Code" means the United States
18 Internal Revenue Code of 1986, as amended;

19 K. "lump-sum amount" means ~~[an amount that]~~ for the
20 purpose of determining liability for federal income tax, an
21 amount that was not included in adjusted gross income but upon
22 which the five-year-averaging or the ten-year-averaging method
23 of tax computation provided in Section 402 of the Internal
24 Revenue Code, as that section may be amended or renumbered, was
25 applied;

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- 1 L. "modified gross income" means all income of the
2 taxpayer and, if any, the taxpayer's spouse and dependents,
3 undiminished by losses and from whatever source ~~derived~~,
4 including:
- 5 (1) compensation;
 - 6 (2) net profit ~~derived~~ from business;
 - 7 (3) gains ~~derived~~ from dealings in property;
 - 8 (4) interest;
 - 9 (5) net rents;
 - 10 (6) royalties;
 - 11 (7) dividends;
 - 12 (8) alimony and separate maintenance payments;
 - 13 (9) annuities;
 - 14 (10) income from life insurance and endowment
15 contracts;
 - 16 (11) pensions;
 - 17 (12) discharge of indebtedness;
 - 18 (13) distributive share of partnership income;
 - 19 (14) income in respect of a decedent;
 - 20 (15) income from an interest in an estate or a
21 trust;
 - 22 (16) social security benefits;
 - 23 (17) unemployment compensation benefits;
 - 24 (18) workers' compensation benefits;
 - 25 (19) public assistance and welfare benefits;

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1 (20) cost-of-living allowances; and

2 (21) gifts;

3 M "modified gross income" [~~does not include~~]
4 excludes:

5 (1) payments for hospital, dental, medical or
6 drug expenses [~~whether made~~] to or on behalf of the taxpayer;

7 (2) the value of room and board provided by
8 federal, state or local governments or by private individuals
9 or agencies based upon financial need and not as a form of
10 compensation;

11 (3) payments [~~made~~] pursuant to a federal,
12 state or local government program directly or indirectly to a
13 third party on behalf of the taxpayer when identified to a
14 particular use or invoice by the payer; or

15 (4) payments [~~made~~] pursuant to Sections
16 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

17 N. "net income" means, for estates and trusts, base
18 income adjusted to exclude amounts that the state is prohibited
19 from taxing because of the laws or constitution of this state
20 or the United States and means, for taxpayers other than
21 estates or trusts, base income adjusted to exclude:

22 (1) an amount equal to the standard deduction
23 allowed the taxpayer for the taxpayer's taxable year by Section
24 63 of the Internal Revenue Code, as that section may be amended
25 or renumbered;

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1 (2) an amount equal to the itemized deductions
2 [as] defined in Section 63 of the Internal Revenue Code, as
3 that section may be amended or renumbered, allowed the taxpayer
4 for the taxpayer's taxable year less the amount excluded
5 pursuant to Paragraph (1) of this subsection;

6 (3) an amount equal to the product of the
7 exemption amount allowed for the taxpayer's taxable year by
8 Section 151 of the Internal Revenue Code, as that section may
9 be amended or renumbered, multiplied by the number of personal
10 exemptions allowed for federal income tax purposes;

11 (4) income from obligations of the United
12 States of America less expenses incurred to earn that income;

13 (5) other amounts that the state is prohibited
14 from taxing because of the laws or constitution of this state
15 or the United States;

16 (6) for taxable years that began prior to
17 January 1, 1991, an amount equal to the sum of:

18 (a) net operating loss carryback
19 deductions to that year from taxable years beginning prior to
20 January 1, 1991 claimed and allowed, as provided by the
21 Internal Revenue Code; and

22 (b) net operating loss carryover
23 deductions to that year claimed and allowed; and

24 (7) for taxable years beginning on or after
25 January 1, 1991, an amount equal to the sum of any net

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1 operating loss carryover deductions to that year claimed and
2 allowed, provided that the amount of any net operating loss
3 carryover from a taxable year beginning on or after January 1,
4 1991 may be excluded only as follows:

5 (a) in the case of a timely filed
6 return, in the taxable year immediately following the taxable
7 year for which the return is filed; or

8 (b) in the case of amended returns or
9 original returns not timely filed, in the first taxable year
10 beginning after the date on which the return or amended return
11 establishing the net operating loss is filed; and

12 (c) in either case, if the net operating
13 loss carryover exceeds the amount of net income exclusive of
14 the net operating loss carryover for the taxable year to which
15 the exclusion first applies, in the next four succeeding
16 taxable years in turn until the net operating loss carryover is
17 exhausted; in no event shall a net operating loss carryover be
18 excluded in any taxable year after the fourth taxable year
19 beginning after the taxable year to which the exclusion first
20 applies;

21 0. "net operating loss" means any net operating
22 loss, as defined by Section 172(c) of the Internal Revenue
23 Code, as that section may be amended or renumbered, for a
24 taxable year as further increased by the income, if any, from
25 obligations of the United States for that year less related

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1 expenses;

2 P. "net operating loss carryover" means the amount,
3 or any portion of the amount, of a net operating loss for any
4 taxable year that, pursuant to Paragraph (6) or (7) of
5 Subsection N of this section, may be excluded from base income;

6 Q. "nonresident" means every individual not a
7 resident of this state;

8 R. "person" means any individual, estate, trust,
9 receiver, cooperative association, club, corporation, company,
10 firm, partnership, limited liability company, joint venture,
11 syndicate or other association; "person" also means, to the
12 extent permitted by law, any federal, state or other
13 governmental unit or subdivision or agency, department or
14 instrumentality thereof;

15 S. "resident" means an individual who is domiciled
16 in this state during any part of the taxable year; but any
17 individual who, on or before the last day of the taxable year,
18 changed his place of abode to a place without this state with
19 the bona fide intention of continuing actually to abide
20 permanently without this state is not a resident for the
21 purposes of the Income Tax Act for periods after that change of
22 abode;

23 T. "secretary" means the secretary of taxation and
24 revenue or the secretary's delegate;

25 U. "state" means any state of the United States,

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1 the District of Columbia, the commonwealth of Puerto Rico, any
2 territory or possession of the United States or any political
3 subdivision of a foreign country;

4 V. "state or local bond" means a bond issued by a
5 state other than New Mexico or by a local government other than
6 one of New Mexico's political subdivisions, the interest from
7 which is excluded from income for federal income tax purposes
8 under Section 103 of the Internal Revenue Code, as that section
9 may be amended or renumbered;

10 W. "surviving spouse" means "surviving spouse" as
11 generally defined for federal income tax purposes;

12 X. "taxable income" means net income less any lump-
13 sum amount;

14 Y. "taxable year" means the calendar year or fiscal
15 year upon the basis of which the net income is computed under
16 the Income Tax Act and includes, in the case of the return made
17 for a fractional part of a year under the provisions of the
18 Income Tax Act, the period for which the return is made; and

19 Z. "taxpayer" means any individual subject to the
20 tax imposed by the Income Tax Act."

21 Section 2. Section 7-2-12 NMSA 1978 (being Laws 1965,
22 Chapter 202, Section 10, as amended) is amended to read:

23 "7-2-12. TAXPAYER RETURNS--PAYMENT OF TAX.--

24 A. Every resident of this state and every
25 individual deriving income from any business transaction,

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1 property or employment within this state and not exempt from
2 tax under the Income Tax Act who is required by the laws of the
3 United States to file a federal income tax return shall file a
4 complete tax return with the department in form and content as
5 prescribed by the secretary. Except as provided in Subsection
6 B of this section, the return required and the tax imposed on
7 individuals under the Income Tax Act are due and payment is
8 required on or before the fifteenth day of the fourth month
9 following the end of the taxable year.

10 B. When the department approves electronic media
11 for use by a taxpayer whose taxable year is a calendar year,
12 the taxpayer who uses electronic media for both filing and
13 payment must submit the required return and the tax imposed on
14 individuals under the Income Tax Act on or before the thirtieth
15 day of the fourth month following the end of the taxable year."

16 Section 3. Section 7-2-12.2 NMSA 1978 (being Laws 1996,
17 Chapter 17, Section 1, as amended) is amended to read:

18 "7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED
19 TAX--PENALTY.--

20 A. Except as otherwise provided in this section,
21 every individual who is required to file an income tax return
22 under the Income Tax Act shall pay the required annual payment
23 in installments through either withholding or estimated tax
24 payments.

25 B. For the purposes of this section:

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1 (1) "required annual payment" means the lesser
2 of:

3 (a) ninety percent of the tax shown on
4 the return of the taxable year or, if no return is filed,
5 ninety percent of the tax for the taxable year; or

6 (b) one hundred percent of the tax shown
7 on the return for the preceding taxable year if the preceding
8 taxable year was a taxable year of twelve months and the
9 taxpayer filed a New Mexico tax return for that preceding
10 taxable year; and

11 (2) "tax" means the tax imposed under Section
12 7-2-3 NMSA 1978 less any amount allowed for applicable credits
13 [~~provided by Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA~~
14 ~~1978 and for any applicable tax~~] and rebates provided by the
15 Income Tax Act.

16 C. There shall be four required installments for
17 each taxable year. If a taxpayer is not liable for estimated
18 tax payments on March 31, but becomes liable for estimated tax
19 at some point after March 31, he ~~must~~ make estimated tax
20 payments as follows:

21 (1) if the taxpayer becomes required to pay
22 estimated tax after March 31 and before June 1, fifty percent
23 of the required annual payment ~~must~~ be paid on or before June
24 15, twenty-five percent on September 15 and twenty-five percent
25 on or before January 15 of the following taxable year;

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1 (2) if the taxpayer becomes required to pay
2 estimated tax after May 31, but before September 1, the
3 taxpayer must pay seventy-five percent of the required annual
4 payment [~~must be paid~~] on or before September 15 and twenty-
5 five percent on or before January 15 of the following taxable
6 year; and

7 (3) if the taxpayer becomes required to pay
8 estimated tax after August 31, the taxpayer must pay one
9 hundred percent of the required annual payment [~~must be paid~~]
10 on or before January 15 of the following taxable year.

11 D. Except as otherwise provided in this section,
12 for taxpayers reporting on a calendar year basis, estimated
13 payments of the required annual payment are due on or before
14 April 15, June 15 and September 15 of the taxable year and
15 January 15 of the following taxable year. For taxpayers
16 reporting on a fiscal year other than a calendar year, the due
17 dates for the installments are the fifteenth day of the fourth,
18 sixth and ninth months of the fiscal year and the fifteenth day
19 of the first month following the fiscal year.

20 E. A rancher or farmer who expects to receive at
21 least two-thirds of his gross income for the taxable year from
22 ranching or farming, or who has received at least two-thirds of
23 his gross income for the previous taxable year from ranching or
24 farming, may:

25 (1) pay the required annual payment for the

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1 taxable year in one installment on or before January 15 of the
2 following taxable year; or

3 (2) on or before March 1 of the following
4 taxable year, file a return for the taxable year and pay in
5 full the amount computed on the return as payable.

6 No penalty under Subsection G of this section shall be
7 imposed unless the rancher or farmer underpays his tax by more
8 than one-third. If a joint return is filed, a rancher or
9 farmer must consider his or her spouse's gross income in
10 determining whether at least two-thirds of gross income is from
11 ranching or farming.

12 F. For the purposes of this section, the amount of
13 tax deducted and withheld with respect to a taxpayer under the
14 Withholding Tax Act shall be deemed a payment of estimated tax.
15 An equal part of the amount of withheld tax shall be deemed
16 paid on each due date for the applicable taxable year unless
17 the taxpayer establishes the dates on which all amounts were
18 actually withheld. In ~~[which]~~ that case, the amounts withheld
19 shall be deemed payments of estimated tax on the dates on which
20 the amounts were actually withheld. The taxpayer may apply the
21 provisions of this subsection separately to wage withholding
22 and any other amounts withheld under the Withholding Tax Act.

23 G. Except as otherwise provided in this section, in
24 the case of ~~[any]~~ an underpayment of the required annual
25 payment by a taxpayer, there shall be added to the tax ~~[an~~

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1 ~~amount as~~] a penalty determined by applying the rate specified
2 in Subsection B of Section 7-1-67 NMSA 1978 to the amount of
3 the underpayment for the period of the underpayment, provided:

4 (1) the amount of the underpayment shall be
5 the excess of the amount of the required annual payment over
6 the amount, if any, paid on or before the due date for the
7 installment;

8 (2) the period of the underpayment runs from
9 the due date for the installment to whichever of the following
10 dates is earlier:

11 (a) the fifteenth day of the fourth
12 month following the close of the taxable year; or

13 (b) with respect to any portion of the
14 underpayment, the date on which the portion was paid; and

15 (3) a payment of estimated tax shall be
16 credited against unpaid or underpaid installments in the order
17 in which the installments are required to be paid.

18 H. No penalty shall be imposed under Subsection G
19 of this section for any taxable year if:

20 (1) the difference between the following is
21 less than five hundred dollars (\$500):

22 (a) the tax shown on the return for the
23 taxable year or, when no return is filed, the tax for the
24 taxable year; and

25 (b) any amount withheld under the

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1 provisions of the Withholding Tax Act for that taxpayer for
2 that taxable year;

3 (2) the individual's preceding taxable year
4 was a taxable year of twelve months, the individual did not
5 have [~~any~~] a tax liability for the preceding taxable year and
6 the individual was a resident of New Mexico for the entire
7 taxable year;

8 (3) through either withholding or estimated
9 tax payments, the individual paid the required annual payment
10 as defined in Subsection B of this section; or

11 (4) the secretary determines that the
12 underpayment was not due to fraud, negligence or disregard of
13 rules and regulations.

14 I. If on or before January 31 of the following
15 taxable year the taxpayer files a return for the taxable year
16 and pays in full the amount computed on the return as payable,
17 then no penalty under Subsection G of this section shall be
18 imposed [~~with respect to any~~] on an underpayment of the fourth
19 required installment for the taxable year.

20 J. This section [~~shall be applied~~] applies to
21 taxable years of less than twelve months and to taxpayers
22 reporting on a fiscal year other than a calendar year in the
23 manner determined by regulation or instruction of the
24 secretary.

25 K. Except as otherwise provided in Subsection L of

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1 this section, this section applies to any estate or trust.

2 L. This section does not apply to any trust that is
3 subject to the tax imposed by Section 511 of the Internal
4 Revenue Code or that is a private foundation. [~~With respect to~~
5 ~~any~~] For a taxable year [ending] that ends before the date two
6 years after the date of the decedent's death, this section does
7 not apply to:

8 (1) the estate of the decedent; or

9 (2) any trust all of which was treated under
10 Subpart E of Part I of Subchapter J of Chapter 1 of the
11 Internal Revenue Code as owned by the decedent and to which the
12 residue of the decedent's estate will pass under the decedent's
13 will or, if no will is admitted to probate, that is the trust
14 primarily responsible for paying debts, taxes and expenses of
15 administration.

16 M The provisions of this section do not apply to
17 first-year residents. "

18 Section 4. Section 7-2-14.3 NMSA 1978 (being Laws 1994,
19 Chapter 111, Section 1, as amended) is amended to read:

20 "7-2-14.3. TAX REBATE OF PART OF PROPERTY TAX DUE FROM
21 LOW-INCOME TAXPAYER--LOCAL OPTION--REFUND.--

22 A. The tax rebate provided by this section may be
23 claimed for the taxable year for which the return is filed by
24 an individual who:

25 (1) has his principal place of residence in a

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1 county that has adopted an ordinance pursuant to Subsection G
2 of this section;

3 (2) is not a dependent of another individual;

4 (3) files a return; and

5 (4) incurred a property tax liability on his
6 principal place of residence in the taxable year.

7 B. The tax rebate provided by this section shall be
8 allowed for any individual eligible to claim the refund
9 pursuant to Subsection A of this section and who:

10 (1) was not an inmate of a public institution
11 for more than six months during the taxable year;

12 (2) was physically present in New Mexico for
13 at least six months during the taxable year for which the
14 rebate is claimed; and

15 (3) is eligible for the rebate as a low-income
16 property taxpayer in accordance with the provisions of
17 Subsection D of this section.

18 C. A husband and wife who file separate returns for
19 the taxable year in which they could have filed a joint return
20 may each claim only one-half of the tax rebate that would have
21 been allowed on the joint return.

22 D. As used in the table in this subsection,
23 "property tax liability" means the amount of property tax
24 resulting from the imposition of the county and municipal
25 property tax operating impositions on the net taxable value of

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1 the taxpayer's principal place of residence calculated for the
 2 year for which the rebate is claimed. The tax rebate provided
 3 in this section is as specified in the following table:

4 **LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE**

	Taxpayer's Modified Gross Income	Property Tax Rebate
	But Not	
Over	Over	
\$ 0	\$ 8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability
12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

17 E. If a taxpayer's modified gross income is zero,
 18 the taxpayer may claim a tax rebate in the amount shown in the
 19 first row of the table. The tax rebate provided for in this
 20 section shall not exceed three hundred fifty dollars (\$350) per
 21 return and, if a return is filed separately that could have
 22 been filed jointly, the tax rebate shall not exceed one hundred
 23 seventy-five dollars (\$175). No tax rebate shall be allowed
 24 any taxpayer whose modified gross income exceeds twenty-four
 25 thousand dollars (\$24,000).

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1 F. The tax rebate provided for in this section may
2 be deducted from the taxpayer's New Mexico income tax liability
3 for the taxable year. If the tax rebate exceeds the taxpayer's
4 income tax liability, the excess shall be refunded to the
5 taxpayer.

6 G. In January of every odd-numbered year in which a
7 county does not have in effect an ordinance adopted pursuant to
8 this subsection, the board of county commissioners of the
9 county shall conduct a public hearing on the question of
10 whether the property tax rebate provided in this section
11 benefiting low-income property taxpayers in the county should
12 be made available through adoption of a county ordinance.
13 Notice of the public hearing shall be published once at least
14 two weeks prior to the hearing date in at least one newspaper
15 of general circulation in the county and broadcast at some time
16 within the week before the hearing on at least one radio
17 station with substantial broadcasting coverage in the county.
18 At the public hearing, the board shall take action on the
19 question and if a majority of the members elected votes to
20 adopt an ordinance, it shall be adopted no later than thirty
21 days after the public hearing.

22 H. An ordinance adopted pursuant to Subsection G of
23 this section shall specify the [~~first~~] taxable [~~year~~] years to
24 which it is applicable. The board of county commissioners
25 adopting an ordinance shall notify the department of the

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1 adoption of the ordinance and furnish a copy of the ordinance
2 to the department no later than September 1 of the first
3 taxable year to which the ordinance applies.

4 I. No later than [~~July 1~~] December 31 of the year
5 immediately following the first year in which the low-income
6 taxpayer property tax rebate provided in the Income Tax Act is
7 in effect for a county, and no later than [~~July 1~~] December 31
8 of each year thereafter in which the tax rebate is in effect,
9 the department shall certify to the county the amount of the
10 loss of income tax revenue to the state for the previous
11 taxable year attributable to the allowance of property tax
12 rebates to taxpayers of that county. The county shall promptly
13 pay the amount certified to the department. If a county fails
14 to pay the amount certified within thirty days of the date of
15 certification, the department may enforce collection of the
16 amount by action against the county and may withhold from any
17 revenue distribution to the county, not dedicated or pledged,
18 amounts up to the amount certified.

19 J. As used in this section, "principal place of
20 residence" means the dwelling owned and occupied by the
21 taxpayer and so much of the land surrounding it, not to exceed
22 five acres, as is reasonably necessary for use of the dwelling
23 as a home and may consist of a part of a multidwelling or a
24 multipurpose building and a part of the land upon which it is
25 built."

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1 Section 5. Section 7-2-18 NMSA 1978 (being Laws 1977,
2 Chapter 196, Section 1, as amended) is amended to read:

3 "7-2-18. TAX REBATE OF PROPERTY TAX DUE THAT EXCEEDS THE
4 ELDERLY TAXPAYER' S MAXIMUM PROPERTY TAX LIABILITY-- REFUND. --

5 A. Any resident who has attained the age of sixty-
6 five and files an individual New Mexico income tax return and
7 is not a dependent of another individual may claim a tax rebate
8 for the taxable year for which the return is filed. The tax
9 rebate shall be the amount of property tax due on the
10 resident's principal place of residence for the taxable year
11 that exceeds the property tax liability indicated by the table
12 in Subsection F or G, as appropriate, of this section, based
13 upon the taxpayer's modified gross income.

14 B. Any resident otherwise qualified under this
15 section who rents a principal place of residence from another
16 person may calculate the amount of property tax due by
17 multiplying the gross rent for the taxable year by six percent.
18 The tax rebate shall be the amount of property tax due on the
19 taxpayer's principal place of residence for the taxable year
20 that exceeds the property tax liability indicated by the table
21 in Subsection F or G, as appropriate, of this section, based
22 upon the taxpayer's modified gross income.

23 C. As used in this section, "principal place of
24 residence" means the resident's dwelling, whether owned or
25 rented, and so much of the land surrounding it, not to exceed

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1 five acres, as is reasonably necessary for use of the dwelling
2 as a home and may consist of a part of a multidwelling or a
3 multipurpose building and a part of the land upon which it is
4 built.

5 D. No claim for the tax rebate provided in this
6 section shall be allowed a resident who was an inmate of a
7 public institution for more than six months during the taxable
8 year or who was not physically present in New Mexico for at
9 least six months during the taxable year for which the tax
10 rebate could be claimed.

11 E. A husband and wife who file separate returns for
12 a taxable year in which they could have filed a joint return
13 may each claim only one-half of the tax rebate that would have
14 been allowed on a joint return.

15 F. For taxpayers whose principal place of residence
16 is in a county that does not have in effect for the taxable
17 year a resolution in accordance with Subsection J of this
18 section, the tax rebate provided for in this section may be
19 claimed in the amount of the property tax due each taxable year
20 that exceeds the amount shown as property tax liability in the
21 following table:

22 ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

	Property Tax
Taxpayer's Modified Gross Income	Liability
But Not	

underscored material = new
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1	Over	Over	
2	\$ 0	\$ 1,000	\$20
3	1,000	2,000	25
4	2,000	3,000	30
5	3,000	4,000	35
6	4,000	5,000	40
7	5,000	6,000	45
8	6,000	7,000	50
9	7,000	8,000	55
10	8,000	9,000	60
11	9,000	10,000	75
12	10,000	11,000	90
13	11,000	12,000	105
14	12,000	13,000	120
15	13,000	14,000	135
16	14,000	15,000	150
17	15,000	16,000	180.

18 G. For taxpayers whose principal place of residence
19 is in a county that has in effect for the taxable year a
20 resolution in accordance with Subsection J of this section, the
21 tax rebate provided for in this section may be claimed in the
22 amount of the property tax due each taxable year that exceeds
23 the amount shown as property tax liability in the following
24 table:

25 ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

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1			Property Tax
2	Taxpayer's Modified Gross Income		Liability
3		But Not	
4	Over	Over	
5	\$ 0	\$ 1,000	\$ 20
6	1,000	2,000	25
7	2,000	3,000	30
8	3,000	4,000	35
9	4,000	5,000	40
10	5,000	6,000	45
11	6,000	7,000	50
12	7,000	8,000	55
13	8,000	9,000	60
14	9,000	10,000	75
15	10,000	11,000	90
16	11,000	12,000	105
17	12,000	13,000	120
18	13,000	14,000	135
19	14,000	15,000	150
20	15,000	16,000	165
21	16,000	17,000	180
22	17,000	18,000	195
23	18,000	19,000	210
24	19,000	20,000	225
25	20,000	21,000	240

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1	21, 000	22, 000	255
2	22, 000	23, 000	270
3	23, 000	24, 000	285
4	24, 000	25, 000	300.

5 H. If a taxpayer's modified gross income is zero,
6 the taxpayer may claim a tax rebate based upon the amount shown
7 in the first row of the appropriate table. The tax rebate
8 provided for in this section shall not exceed two hundred fifty
9 dollars (\$250) per return, and, if a return is filed separately
10 that could have been filed jointly, the tax rebate shall not
11 exceed one hundred twenty-five dollars (\$125). No tax rebate
12 shall be allowed any taxpayer whose modified gross income
13 exceeds sixteen thousand dollars (\$16,000) for taxpayers whose
14 principal place of residence is in a county that does not have
15 in effect for the taxable year a resolution in accordance with
16 Subsection J of this section and twenty-five thousand dollars
17 (\$25,000) for all other taxpayers.

18 I. The tax rebate provided for in this section may
19 be deducted from the taxpayer's New Mexico income tax liability
20 for the taxable year. If the tax rebate exceeds the taxpayer's
21 income tax liability, the excess shall be refunded to the
22 taxpayer.

23 J. The board of county commissioners may adopt a
24 resolution authorizing otherwise qualified taxpayers whose
25 principal place of residence is in the county to claim the

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1 rebate provided by this section in the amounts set forth in
2 Subsection G of this section. The resolution ~~must~~ also provide
3 that the county will reimburse the state for the additional
4 amount of tax rebates paid to such taxpayers over the amount
5 that would have been paid to such taxpayers under Subsection F
6 of this section. The resolution ~~may~~ apply to one or more
7 taxable years and shall specify the period of time for which
8 the rebate provided by this section may be claimed by qualified
9 taxpayers. The county ~~must~~ adopt the resolution and notify the
10 department of the adoption by no later than September 1 of the
11 taxable year to which the resolution first applies. The
12 department shall determine the additional amounts paid to
13 taxpayers of the county for each taxable year and shall bill
14 the county for the amount at the time and in the manner
15 determined by the department. If the county fails to pay any
16 bill within thirty days, the department ~~may~~ deduct the amount
17 due from any amount to be transferred or distributed to the
18 county by the state, other than debt interceptions. "

19 Section 6. Section 7-2-33 NMSA 1978 (being Laws 1997,
20 Chapter 259, Section 9) is amended to read:

21 "7-2-33. EDUCATION TRUST FUND--EARNINGS TAX EXEMPT--
22 WITHDRAWALS ARE TAXABLE INCOME--AUTHORITY TO WITHHOLD TAX.--

23 A. All earnings of an investor, purchaser or
24 beneficiary from investment of money paid by the investor or
25 purchaser or on behalf of the beneficiary into the education

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underscored material = new
[bracketed material] = delete

1 trust fund pursuant to a college investment agreement or
2 prepaid tuition contract authorized in the Education Trust Act
3 are exempt from the income tax pursuant to the Income Tax Act
4 to the extent that they are not otherwise deductible or exempt
5 for federal income tax purposes.

6 B. All amounts refunded to an investor upon
7 termination of a college investment agreement or to a purchaser
8 upon termination of a prepaid tuition contract pursuant to the
9 Education Trust Act are taxable in the year in which they are
10 received.

11 C. Upon payment of a refund to an investor or
12 purchaser pursuant to the provisions of the Education Trust
13 Act, the education trust board shall deduct and withhold from
14 that refund a tax in an amount equal to six percent of the
15 refund. The [~~amount withheld shall be transmitted~~] education
16 trust board shall transmit the withheld amount to the [~~taxation~~
17 ~~and revenue~~] department for disposition pursuant to regulations
18 of the secretary. "

19 Section 7. APPLICABILITY. -- The provisions of this act
20 apply to the 2003 and subsequent taxable years.